

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

MALLINCKRODT PLC., *et al.*,
Debtors.¹

Chapter 11

Case No. 20-12522 (JTD)

(Jointly Administered)

**NOTICE OF FILING OF PERIODIC REPORT OF THE OPIOID MASTER
DISBURSEMENT TRUST II**

TO OPIOID CREDITOR TRUSTEES, THE FUTURE CLAIMANTS' REPRESENTATIVE,
AND ALL OTHER INTERESTED PARTIES:

PLEASE TAKE NOTICE that, in accordance with Section 3.02(b) of the Opioid Master Disbursement Trust II Trust Agreement Dated as of June 16, 2022 (the "Trust Agreement"), Jennifer E. Peacock, Michael Atkinson, and Anne Ferazzi, in their capacities as the Opioid Master Disbursement Trust II Trustees (the "Trustees"), have filed a periodic report (the "Periodic Report"), attached hereto as Exhibit 1. As further required by Section 3.02(c) of the Trust Agreement, the Periodic Report will be posted on the Opioid Master Disbursement Trust II website at www.opioidmasterdisbursementtrust.com/Mallinckrodt.

¹ A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors' proposed claims and noticing agent at <http://restructuring.ra.kroll.com/Mallinckrodt>. The Debtors' mailing address is 675 McDonnell Boulevard, Hazelwood, Missouri 63042.

Dated: October 14, 2022

Respectfully submitted,

COLE SCHOTZ P.C.

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EXHIBIT 1

Periodic Report for Period Ending September 30, 2022

Opioid Master Disbursement Trust II
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For the Reporting Period Ending September 30, 2022

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Opioid Master Disbursement Trust II

Report for Period June 16, 2022 through September 30, 2022

Introduction

The Opioid Master Disbursement Trust II (“MDT II” or “the Trust”) was established pursuant to the chapter 11 Plan confirmed in the bankruptcy cases of Mallinckrodt plc, *In re Mallinckrodt plc*, Case No. 20-12522 (Bankr. D. Del.) (“the Plan”).¹ The Plan was confirmed by order dated March 2, 2022, and the Plan and MDT II both became effective June 16, 2022. The MDT II is a “hub” trust in a “hub & spoke” trust design, created to receive distributions (from funds to be paid by Mallinckrodt and any litigation recoveries) and then make distributions to the “spoke” beneficiary trusts: the Public Creditor Trusts (for the U.S. States and Territories and local governments within U.S. States and Territories, as well as the federally-recognized American Indian and Alaska Native Tribes) and the Private Creditor Trusts (for, e.g., personal injury victims, persons afflicted by neonatal abstinence syndrome, hospitals).

The MDT II’s primary responsibilities are to: (i) receive the opioid settlement funds from Mallinckrodt; (ii) investigate and pursue claims against third parties that are assigned to the MDT II; (iii) fix a bar date and administer Other Opioid Claims that were not resolved as part of the Plan; (iv) make distributions to the Public and Private Creditor Trusts per the allocations in the Plan; and (v) monetize the New Opioid Warrants. These Opioid Creditor Trusts disburse funds received from MDT II to their respective creditors to be used for approved opioid abatement strategies or, in the case of the PI Trust, to compensate individuals for personal injury damages sustained as a result of the use of Mallinckrodt’s opioid products.

Pursuant to Section 3.02 of the MDT II Trust Agreement, MDT II is obligated to report to each of the Opioid Creditor Trusts and the Future Claimants’ Representative, at least every four months, on topics including the Trust’s:

¹ Capitalized terms used but not herein defined shall have the meaning ascribed to them in the Plan.

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- Assets;
- Expenditures;
- Distributions;
- Forward-looking projections; and
- Litigation proceedings.

More information about the Trust, including important documents, biographies of the MDT II Trustees (Jenni Peacock, Michael Atkinson, and Anne Ferazzi), and answers to frequently asked questions, can be found on the Trust's website: <https://www.opioidmasterdisbursementtrust.com/Mallinckrodt>.

Initial Activities

Upon inception, the Trust has undertaken the activities necessary to ensure efficient functioning. The Trust has established a banking relationship, implemented internal controls, hired advisors and vendors, and has developed an initial budget to support these endeavors. Professional retentions include:

- Brown Rudnick LLP (General Counsel);
- Houlihan Lokey Capital, Inc. (Financial Advisor to the Trust);
- Morgan Stanley (Financial Advisor to the Trust and Investment Manager);
- Gilbert, LLP (Counsel – Litigation);
- Caplin & Drysdale (Counsel – Litigation);
- Cole Schotz P.C. (Counsel – Litigation and Delaware Counsel);
- FTI Consulting, Inc. (Financial Advisor in Support of Trust Litigations);
- Stretto, Inc. (Claims Administrator, Other Opioid Claims);
- Aon plc (Insurance Broker);
- Berkshire Hathaway Specialty Insurance Company (Insurance Provider);

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- CNA Insurance (Insurance Provider); and
- XL Specialty Insurance Company (Insurance Provider).

Financial Update

During the period from June 16, 2022 until September 30, 2022 (“the Period”), the Trust received \$444,230,857 and disbursed \$273,569,297, resulting in a \$170,661,561 ending Trust cash balance.

The Trust’s receipts were comprised of (i) \$443,291,078 on account of the Initial Opioid MDT II Payment from Mallinckrodt and (ii) \$939,779 of interest income (~1.85% annualized rate).

Shortly after the Plan Effective Date, the Trust established a reserve for expenses of \$134,953,403, which was the amount determined in accordance with the Plan to provide sufficient funds for administrative and litigation costs, initially estimated to be \$75,000,000 and \$60,000,000, respectively.² The remainder was paid out or reserved for later distribution in accordance with the Plan, as follows:

- \$264,697,354 to the Public and Private Creditor Trusts;
- \$29,363,667 to the Third-Party Payor Reserve;
- \$11,276,655 to the Municipal and Tribe Opioid Attorneys’ Fee Fund; and
- \$3,000,000 to the Ratepayer Account.

After the Effective Date, the Trust’s disbursements during the Period were comprised of (i) \$5,871,943 on account of Trust expenses³ and (ii) \$3,000,000 from the Ratepayer Account, disbursed in accordance with the Plan as follows:

- \$2,400,000 to the Truth Initiative;
- \$450,000 to the Ratepayer Attorney Fee Fund; and

² Actual amounts received on account of the \$75,000,000 administrative cost estimate were reduced for the payment of certain expenses prior to the Effective Date.

³ Amounts disbursed on account of expenses during the Period exclude fees incurred but unpaid as of September 30, 2022.

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- \$150,000 to the Common Benefit Fund.

The Trust's ending cash balance was \$170,661,561, comprised of the Operating Reserve (\$129,961,429)⁴ and the amounts set aside (and still held) for the Third-Party Payor Reserve and the Municipal and Tribe Opioid Attorneys' Fee Fund. At this time, all assets are held in short-term U.S. Government obligations.

Refer to Appendices 1 and 2 for additional financial details

Other Trust Activities

The Trust has also established the Other Opioid Claims Bar Date, which is the deadline for holders of certain claims (not addressed via the bankruptcy proceedings) to have a proof of claim received by the Trust. Notice of the Other Opioid Claims Bar Date was published in six newspapers over the course of September 13 and 14, 2022, mailed to known creditors on September 16, 2022, and posted on the Mallinckrodt bankruptcy docket and MDT II website on September 16, 2022.

The Other Opioid Claims Bar Date is November 18, 2022.

Legal Matters Update

Under the Plan, the Trust was assigned certain claims against third parties. The claims being pursued are described in greater detail below.

- 1. Insurance Action (*Opioid Master Disbursement Trust II a/k/a Opioid MDT II v. Ace American Insurance Company, et al.*, Case No. 22SL-CC02974 (Mo. Cir. Ct.))**

On June 16, 2022, the Trust filed a lawsuit in St. Louis County, Missouri, against insurers that had issued certain policies under which rights were transferred to the Trust pursuant to the Plan, seeking insurance coverage with respect to the opioid-related claims that were channeled to the Trust and Opioid Creditor Trusts under the Plan. Other policies have mandatory arbitration clauses and were not included in the lawsuit.

⁴ For illustrative purposes, Operating Reserve includes amounts to be used to offset Trust expenses but held in different Trust sub-accounts as of September 30, 2022.

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On August 19, 2022, the Trust served discovery requests on the defendant-insurers seeking information and documents related to the Trust's claims. The defendant-insurers' deadline to answer or otherwise respond to the petition was October 11, 2022, and the deadline to respond to the discovery requests is October 19, 2022. Following the defendant-insurers' response and discovery deadlines, the parties will appear for a case management conference before Judge Richard Stewart.

2. Covidien Spinoff Action (*Opioid Master Disbursement Trust II v. Covidien Unlimited Co., et al.*, Adv. Pro. No. 22-50433 (Bankr. D. Del.))

On October 11, 2022, the Trust filed a lawsuit in the U.S. Bankruptcy Court for the District of Delaware against Covidien Unlimited Company, Mallinckrodt plc's former parent, and three of its subsidiaries, hereinafter referred to, collectively, as Covidien.

The Trust asserts causes of action for intentional and constructive fraudulent transfers, as well as claims for breach of fiduciary duty; reimbursement, indemnification or contribution; equitable subordination; equitable disallowance; and disallowance under the Bankruptcy Code.

The Trust seeks to avoid and recover (a) the value of the entire Covidien enterprise (without the Mallinckrodt business) at the time of the 2013 spinoff of Mallinckrodt from Covidien; (b) the approximately \$867 million in net cash transfers paid to Covidien from 2010 through 2012 for no apparent consideration; and (c) the approximately \$721 million in Mallinckrodt note proceeds that Covidien pocketed before completing the spinoff. In addition, the Trust seeks to avoid (i) the putative indemnification obligations that Covidien imposed on Mallinckrodt under the spinoff agreement and (ii) certain pre-spin tax liabilities in the hundreds of millions of dollars that were imposed on Mallinckrodt in connection with the spinoff, and to recover from Covidien (iii) the value of any payments made by Mallinckrodt on account of those pre-spin tax liabilities.

Furthermore, the Trust has asked the Court to award reimbursement, indemnification or contribution by or from Covidien for (1) payments of indemnity and defense costs made by Mallinckrodt pre-bankruptcy in connection with, or as a result of, opioid-related subpoenas, investigations, litigation, judgments, fines, and settlements, and (2) payments

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made by Mallinckrodt post-petition to satisfy (i) all professional fees and costs, allowed administrative expenses, quarterly fees and other costs related to Mallinckrodt's bankruptcy case and (ii) obligations under Mallinckrodt's confirmed chapter 11 plan.

3. Share Repurchase Program Action (*Opioid Master Disbursement Trust II v. Argos Capital Appreciation Master Fund LP, et al.*, Adv. Pro. No. 22-50435 (Bankr. D. Del.))

On October 12, 2022, the Trust filed a lawsuit in the U.S. Bankruptcy Court for the District of Delaware against seventy-two defendant participants in Mallinckrodt plc's share repurchase program (the "SRP").

The Trust asserts causes of action for intentional and constructive fraudulent transfers through which it seeks to avoid and recover the approximately \$1.6 billion in cash transfers Mallinckrodt plc paid to its equity owners through the SRP between 2015 and 2018. The Trust asserts that the shares Mallinckrodt purchased through the SRP were worthless because Mallinckrodt was deeply insolvent at the time of the repurchases due to massive liabilities incurred from the manufacture and promotion of its opioid products. The Trust asserts that the cash paid to Mallinckrodt shareholders through the SRP was wrongly diverted and should be recouped for the benefit of Mallinckrodt's creditors.

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Appendix

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Appendix 1: Trust Financial Summary

Initial Opioid Deferred Cash Payment Distribution Summary⁵:

	Emergence Amount	Notes
Opioid MDT II Distributable Value	\$443,291,078	
<u>Trust Beneficiary Disbursements</u>		
National Opioid Abatement Fund (NOAT) II	(\$178,279,040)	■ NOAT II receives residual amounts after payment of the below
Tribal Abatement Fund Trust (TAFT) II	(5,332,035)	■ Receives a variable percentage of funds otherwise available for NOAT II
PI Trust (PI & NAS PI Opioid Claims Share)	(36,786,425)	■ Receives 9.925% of Trust receipts after deducting litigation expenses
Hospital Trust	(13,260,500)	■ Receives 3.570% of Trust receipts after deducting litigation expenses
FHCA Opioid Claims (DOJ)	(15,000,000)	■ Received \$15mm at emergence and is now paid in full
Emergency Room Physicians Trust	(4,450,000)	■ Received \$4.5mm at emergence and is now paid in full
NAS Monitoring Trust	(1,450,000)	■ Received \$1.5mm at emergence and is now paid in full
Third-Party Payor Trust	(913,000)	■ Received ~\$900k at emergence; next payment is from reserve
State Opioid Attorneys' Fee Fund	(9,226,354)	■ Receives 4.5% of amounts otherwise available for NOAT II / TAFT II, capped at \$90mm
Total Beneficiary Disbursements	(\$264,697,354)	
<u>Trust Reserves Funding</u>		
MDT II Operating Reserve	(\$134,953,403)	■ Initial \$135mm funding amount less amounts spent prior to emergence
MDT II Third-Party Payor Reserve	(29,363,667)	■ Reserve to be released 6 months after Effective Date
Municipal & Tribe Opioid Attorneys' Fee Fund	(11,276,655)	■ Receives 5.5% of amounts otherwise available for NOAT II / TAFT II, capped at \$110mm
Ratepayer Account	(3,000,000)	■ Receives \$3mm near emergence; funds have since been disbursed
Total Trust Reserves Funding	(\$178,593,724)	
Total Disbursements & Trust Reserves Funding	(\$443,291,078)	

⁵ Reflects all Trust activity related to the receipt and disbursement of the Initial Opioid Deferred Cash Payment and only reflects amounts paid to and from the Trust. Amounts not paid to the Trust were paid directly to beneficiaries or were used to satisfy certain pre-Effective Date expenses.

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Post-Effective Date Trust Activity Summary⁶:

(\$ in actuals)	Beginning Balance	MDT II Period Receipts			MDT II Period Disbursements			Ending Balance
		Opioid Deferred Cash Payments	Interest Income	Total Receipts	Distributions	Expenses	Total Disbursements	
Operating Reserve	\$134,953,403	-	\$879,969	\$879,969	-	(\$5,871,943)	(\$5,871,943)	\$129,961,429
Third-Party Payor Reserve	29,363,667	-	-	-	-	-	-	29,363,667
Municipal and Tribe Opioid Attorneys' Fee Fund	11,276,655	-	59,810	59,810	-	-	-	11,336,464
Ratepayer Account	3,000,000	-	-	-	(3,000,000)	-	(3,000,000)	-
Opioid MDT II Total	\$178,593,724	-	\$939,779	\$939,779	(\$3,000,000)	(\$5,871,943)	(\$8,871,943)	\$170,661,561

Trust Operating Reserve Additional Detail⁶:

(\$ in actuals)	Actual YTD
Beginning Cash	\$134,953,403
Professional Fees - Legal & Litigation Support	(\$5,161,547)
Trustee Fees & Expenses	(271,042)
Professional Fees - Financial & Tax	(150,000)
Insurance	(263,200)
Other	(26,154)
Total Trust Expenses	(\$5,871,943)
Interest Income	879,969
Ending Cash	\$129,961,429
<i>Memo: Trust Operating Reserve Detail for the Period</i>	
Total Fees: Litigation	\$4,922,006
Total Fees: Administrative	949,936
Total Fees	\$5,871,943

⁶ Reflects Trust activity subsequent to the receipt and disbursement of the Initial Opioid Deferred Cash Payment; for illustrative purposes, Operating Reserve includes amounts to be used to offset Trust expenses but held in different Trust sub-accounts as of September 30, 2022; expenses exclude fees incurred during the Period but unpaid as of September 30, 2022.

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Appendix 2: Trust Forecast

Pursuant to the Plan, Mallinckrodt is obligated to make 9 cash payments over 8 years on account of the Opioid Deferred Cash Payments. The scheduled payments total \$1,725,000,000, of which ~\$1,718,000,000 is to be paid to the Trust.⁷ To date, Mallinckrodt has made 1 payment of \$450,000,000, of which \$443,291,078 was paid to the Trust.⁷ The Trust may receive additional amounts on account of assigned litigation claims, interest income, and the monetization of the New Opioid Warrants, but none of these amounts are certain nor can they be estimated at this time. Additionally, the total amount of payments may be reduced if Mallinckrodt elects to exercise the prepayment option provided for under the Plan (during the first 18 months following the Effective Date).

From the Effective Date through May 2023, the Trust is projected to disburse \$23,996,707 on account of its expenses (i.e., excluding disbursements to Opioid Creditor Trusts) comprised of \$22,288,547 for legal and litigation support, \$802,254 for trustee fees and expenses, \$573,764 for financial and tax advisory services, \$263,200 for insurance, and \$68,943 for other expenses.

Trust Period Expense and Operating Reserve Forecast⁸:

	Actual	Forecast	Total
	Jun - Sep (3.5 months)	Oct - May (8 months)	Jun - May (11.5 months)
(\$ in actuals)			
Beginning Cash	\$134,953,403	\$129,961,429	\$134,953,403
Professional Fees - Legal & Litigation Support	(\$5,161,547)	(\$17,127,000)	(\$22,288,547)
Trustee Fees & Expenses	(271,042)	(531,212)	(802,254)
Professional Fees - Financial & Tax	(150,000)	(423,764)	(573,764)
Insurance	(263,200)	-	(263,200)
Other	(26,154)	(42,789)	(68,943)
Total Trust Expenses	(\$5,871,943)	(\$18,124,764)	(\$23,996,707)
Interest Income	879,969	[TBD]	879,969
Ending Cash	\$129,961,429	\$111,836,665	\$111,836,665

⁷ Amounts not paid to the Trust were paid directly to beneficiaries or were used to satisfy certain pre-Effective Date expenses.

⁸ June through September (actual) reflects Trust activity subsequent to the receipt and disbursement of the Initial Opioid Deferred Cash Payment; for illustrative purposes, Operating Reserve includes amounts to be used to offset Trust expenses but held in different Trust sub-accounts as of September 30, 2022; total Trust expenses during the Period exclude fees incurred but unpaid as of September 30, 2022.